



September 19, 2017

VIA ECF AND FIRST-CLASS MAIL

Honorable Peter G. Sheridan
United States District Judge
Clarkson S. Fisher Building and
U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: Tauriga Sciences Inc. v. Cowen, Gunteski & Co. P.A., et al.
Civ. Action No.: 3:16-cv-06285 (PGS)(DEA)

Dear Judge Sheridan:

Our firm, along with Ronald Herzog, Esq. of Steinberg & Cavaliere, LLP represents Defendants Cowan, Gunteski & Co., P.A., Donald Cowan, and William Melyer improperly plead as William Meyler (collectively "Defendants") in the above-referenced matter. I respectfully write Your Honor to request the Court's assistance in resolving serious scheduling issues that have arisen as a result of unanticipated conflicts between an order Your Honor entered and a subsequent order Magistrate Judge Arpert entered.

On July 24, 2017, Your Honor entered an Order (Docket Entry 82) which, *inter alia*, provided that the trial would commence on November 14, 2017, at 10:00 AM. The Order further provided that motions *in limine* must be returnable on October 16, 2017. This return date necessitates an initial filing date of September 22, 2017.

On August 21, 2017, Plaintiff Tauriga Sciences, Inc. filed a motion for a 20-day extension of its time to file its expert's report (Docket Entry 83). This motion, filed five days after Tauriga's expert reports were due, was mooted by a Revised Pre-Trial Scheduling Order Judge Arpert entered on August 25, 2017 (Docket Entry 87). In addition to ruling on several long-standing discovery disputes, the Revised Pre-Trial Scheduling Order directed that affirmative expert reports be served by September 6, 2017, and any opposition reports by October 6, 2017. Magistrate Judge Arpert further directed that expert depositions be completed by October 31, 2017, only two weeks before the November 14, 2017 trial date. The revised schedule impedes Defendants'

E-mail: Karol.CorbinWalker@leclairryan.com
Direct Phone: (973) 491-3306
Direct Fax: (973) 491-3418

1037 Raymond Boulevard, Sixteenth Floor
Newark, New Jersey 07102
Phone: 973.491.3306 \ Fax: 973.491.3555

CALIFORNIA | CONNECTICUT | DELAWARE | FLORIDA | GEORGIA | ILLINOIS | MARYLAND | MASSACHUSETTS | MICHIGAN | NEW JERSEY
NEW YORK | PENNSYLVANIA | RHODE ISLAND | TEXAS | VIRGINIA | WASHINGTON, D.C.

Honorable Peter G. Sheridan
September 19, 2017
Page 2

ability to file a *Daubert* motion following the completion of expert depositions, and the Court's timely determination of the motion prior to the trial date.

Fact discovery is nearly complete as only two fact depositions remain. Judge Arpert permitted Defendants time to take these depositions after the August 30, 2017 Fact Discovery Deadline. However, based on Hurricane Irma, these depositions have been adjourned. The deposition of Frank Lamendola of Spire Group, P.C. (Tauriga's former accountant), has been confirmed for September 27, 2017. We are still awaiting Tauriga's counsel to confirm the deposition of Tauriga's President and CEO, Seth Shaw, which was rescheduled to September 28, 2017.

Tauriga served its expert's report on September 6, 2017. The report is plainly the primary basis for the majority of Plaintiff's claimed damages and is clearly essential to the resolution of this case. Defendants promptly offered numerous dates to depose Plaintiff's expert, but were advised that she is not available before October 19, 2017.

On September 8, 2017, two days after receiving Plaintiff's expert's report, and as directed by paragraph 9 of the Revised Pre-Trial Scheduling Order, Defendants requested permission to move for partial summary judgment dismissing two substantial damage claims identified in the expert's report, on the ground that these claims are based on unenforceable penalty clauses in the underlying contacts between Plaintiff and third parties. Disposition of these two claims will have a material effect on Plaintiff's expert's conclusions and report, and on the necessity and scope of expert testimony responsive to Plaintiff's expert. Tauriga's counsel has advised Judge Arpert that as a result of delays occasioned by the effect of Hurricane Irma, it intends to respond to Defendants' request by September 20, 2017. While Defendants will be prepared to file their motion promptly after securing permission, complete briefing and the time required for the Court's consideration of this motion calls into serious question whether these significant damages issues can be adjudicated in advance of the currently scheduled trial date.

Apart from the motion for partial summary judgment, Defendants anticipate filing a *Daubert* motion after Plaintiff's expert's deposition, and expect to ask the Court to exclude most, if not all, of the expert's conclusions. The conflicts among the September 22, 2017 motion *in limine* filing deadline (which will not allow for an expert deposition before the motions must be made), the October 31, 2017 expert discovery cut-off, and the November 14, 2017 trial date, only two weeks later, will not afford sufficient time for briefing, the Court's consideration of Defendants' *Daubert* motion—or Plaintiff's, should Defendants tender an expert and Plaintiffs wish to examine Defendants' expert and then seek to preclude the expert's testimony—and adequate time to prepare for trial.

Based on these circumstances, we respectfully request that *Daubert* motions be filed by November 22, 2017, so as to be heard on December 18, 2017, with the trial date to be adjusted accordingly.

Honorable Peter G. Sheridan
September 19, 2017
Page 3

We appreciate the Court's consideration of this request.

Respectively submitted,

/s/ Karol Corbin Walker

KAROL CORBIN WALKER

KCW:st

cc: Honorable Douglas E. Arpert (via ECF and facsimile)
All Counsel of Record (via ECF)